

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Criminal No.
 :
 v. : 18 U.S.C. § 371;
 : 22 U.S.C. § 2778(b)(2); and
 BING XU : 18 U.S.C. § 2
 :
 : S U P E R S E D I N G
 : I N D I C T M E N T

The Grand Jury in and for the District of New Jersey,
sitting at Newark, charges:

COUNT ONE

CONSPIRACY

(18 U.S.C. § 371)

BACKGROUND

1. At all times relevant to this Superseding
Indictment:

a. Defendant Bing Xu was a manager at Everbright
Science and Technology, Ltd. ("EST"), a company with its
principal place of business in the People's Republic of China and
doing business in the People's Republic of China and elsewhere.

b. Sherley L., who is named as a co-conspirator
but not as a defendant herein, was an assistant to defendant Bing
Xu at EST.

c. F-1600 Night-Vision technology consisted of an
adaptor and United States Department of State regulated image

intensifiers, which, when attached to a camera, enabled the camera to take photographs in low-light settings.

d. Image intensifiers included in the F-1600 Night-Vision technology were classified as a United States Munitions List item, and controlled for export from the United States under specific United States Department of State ("State Department") regulations. As such, it was against federal law to export the F-1600 Night-Vision technology without a license issued by the State Department.

THE ARMS EXPORT CONTROL ACT

2. Pursuant to the Arms Export Control Act, 22 U.S.C. § 2778, et. seq., in furtherance of the security and foreign policy of the United States of America, the President was authorized to control the import and export of defense articles. The President was also authorized to designate those items which shall be considered defense articles and placed on the United States Munitions List ("USML").

3. "Defense articles," as that term is used in 22 U.S.C. §§ 2778(b)(2), and in 22 C.F.R. § 127.1(a)(1) and (a)(3), means items and technical data designated for placement on the USML, and can include weapons, weapons systems, night-vision technology, munitions, aircraft and other implements of war.

4. Persons engaged in the export of defense articles covered by the USML must be registered with the State Department, Office of Defense Trade Controls ("ODTC"), and must apply for and

receive a valid license or other approval to export the defense articles from the United States.

5. The F-1600 Night-Vision technology was a defense article within the meaning of 22 U.S.C. §§ 2778(b)(2), and 22 C.F.R. § 127.1(a)(3) in that it constituted military-grade night vision technology placed on the USML.

THE CONSPIRACY

6. Beginning in or about June 2007 through on or about October 29, 2007, in the District of New Jersey and elsewhere, defendant

BING XU

did knowingly and intentionally conspire and agree with Sherley L. and others to commit offenses against the United States, to wit, to export from the United States to the People's Republic of China defense articles designated by the President under 22 U.S.C. § 2778(a)(1) without first obtaining from the State Department a valid license or written approval for such export, contrary to Title 22, United States Code, Section 2778(b)(2); and Title 22, Code of Federal Regulations, Sections 121.1, 123.1, and 127.1(a)(3).

MEANS AND METHODS OF THE CONSPIRACY

7. It was part of the conspiracy that the conspirators would seek to export from the United States to the People's Republic of China certain items, in particular the F-1600 Night-Vision technology, a portion of which had been

identified as USML items.

8. It was further part of the conspiracy that the conspirators would engage in this transaction without first obtaining a license to export the USML items.

9. It was further part of the conspiracy that the conspirators would place an order for the USML goods with a company that the conspirators believed to be willing to export such goods to the People's Republic of China without the appropriate export license.

10. It was further part of the conspiracy that the conspirators would wire funds to the United States in payment for the USML items.

OVERT ACTS

11. On or about June 21, 2007, an individual identifying herself as "Sherley from Everbright Sci& Tec Co., Ltd." contacted an undercover law enforcement agent located in the District of New Jersey (hereinafter "U/C"), via electronic mail ("e-mail"), regarding the purchase of night-vision technology, which would include an image intensifier, indicating that she believed that the U/C had "ways to export [the night-vision technology] to China."

12. On or about June 26, 2007, Sherley L. sent an e-mail to the U/C stating, among other things, that EST was interested in ordering a "whole set of 9350XL night vision for Canon XL camcorders, including 9350CIU3-F-1600 Common Module

Central Intensifier" (hereinafter "F-1600 Night-Vision technology").

13. On or about June 27, 2007, Sherley L. sent an e-mail to the U/C, which sought to have the U/C ship the night-vision technology to EST in China and requested information regarding the shipping process.

14. On or about August 29, 2007, Sherley L. sent an e-mail to the U/C, advising that EST would be willing to prepay for the F-1600 Night-Vision technology and take delivery of those items in the United States.

15. On or about September 5, 2007, Sherley L. sent an e-mail to the U/C ordering "two image intensifiers," referring to the F-1600 Night-Vision technology, and requesting a "new proforma invoice for them."

16. On or about September 24, 2007, Sherley L. sent an e-mail to the U/C indicating that a manager with EST "will be in Washington, D.C. from Oct.26 - Oct. 31, and hopes to meet you there at that time."

17. On or about September 27, 2007, Sherley L. sent an e-mail to the U/C confirming that the manager, identified as defendant Xu, would fly to New York and then travel to New Jersey for the purpose of completing the transaction for the F-1600 Night-Vision technology.

18. On or about October 25, 2007, EST sent approximately \$14,080.00 via wire transfer to the U/C's bank

account, representing payment for the F-1600 Night-Vision technology.

19. On or about October 26, 2007, defendant Xu traveled to the United States from China.

20. On or about October 29, defendant Xu met with the U/C to inspect the F-1600 Night-Vision technology, during which he discussed the transport of the items from the United States to China, and, among other things, advised the U/C to remove all serial numbers and identifying markings from the F-1600 Night-Vision technology prior to shipment.

In violation of Title 18, United States Code, Section 371.

COUNT TWO

ARMS EXPORT CONTROL ACT

(22 U.S.C. § 2778(b)(2))

1. Paragraphs 1 through 5 and Paragraphs 7 through 10 of Count One of this Superseding Indictment are realleged and incorporated as thought set forth in full herein.

2. From on or about October 26, 2007 through on or about October 29, 2007, in the District of New Jersey and elsewhere, defendant

BING XU

knowingly and willfully attempted to export from the United States to the People's Republic of China a defense article of U.S. origin, namely the F-1600 Night-Vision technology, without first obtaining from the State Department a license or written approval for such export.

In violation of Title 22, United States Code, Section 2778(b)(2), Title 22, Code of Federal Regulations, Sections 121.1, 123.1 and 127.1(a)(1) and (d), and Title 18, United States Code, Section 2.

A TRUE BILL

FOREPERSON

CHRISTOPHER J. CHRISTIE
United States Attorney